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FM AMEMBASSY ASHGABAT
TO RUEHC/SECSTATE WASHDC PRIORITY 0489
INFO RUCNCLS/ALL SOUTH AND CENTRAL ASIA COLLECTIVE PRIORITY
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RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY
RUEHAK/AMEMBASSY ANKARA PRIORITY 3545
RUEHBJ/AMEMBASSY BEIJING PRIORITY 1363
RUEHKO/AMEMBASSY TOKYO PRIORITY 1230
RUEHIT/AMCONSUL ISTANBUL PRIORITY 1799
RUEKJCS/JOINT STAFF WASHDC PRIORITY
RHMFIUU/CDR USCENTCOM MACDILL AFB FL PRIORITY
RUEKJCS/SECDEF WASHDC PRIORITY
RUEAIIA/CIA WASHDC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RHEFDIA/DIA WASHDC PRIORITY
RUCPDOG/DEPT OF COMMERCE WASHDC PRIORITY
RHEBAAA/DEPT OF ENERGY WASHDC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY

UNCLAS SECTION 01 OF 03 ASHGABAT 000377

SIPDIS

SENSITIVE
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STATE FOR SCA/CEN, EEB
AID/W FOR EE/EA
PLEASE PASS TO USDAR DAN STEIN
COMMERCE FOR HUEPER
ENERGY FOR EKIMOFF
TREASURY FOR BAKER/LANIER
FRANKFURT ALSO FOR IRS

E.O. 12958: N/A

TAGS: [PGOV](#) [EAID](#) [ECON](#) [EFIN](#) [EPET](#) [TX](#)

SUBJECT: TURKMENISTAN: NEW TAX CODE FOSTERS FOREIGN ASSISTANCE

11. (U) Sensitive but unclassified. Not for public Internet.

12. (U) SUMMARY: On March 17 President Berdimuhamedov passed a law amending the Tax Code of Turkmenistan for the sixth time since he is in office. The March 17 amendments are the most numerous and significant so far. The majority of changes seem to represent an effort to streamline and clarify tax procedures. However, the new code also addresses such important tax categories as the taxation of government transactions, foreign assistance, and, more importantly, petroleum operations and non-residents that many foreign companies have been pushing for. END SUMMARY.

TAXATION OF THE GOVERNMENT

13. (U) The new code provides several tax privileges to the government. Government agencies and local governments are explicitly exempted from the property tax paid on fixed assets and stocks. The sale of goods and provision of services by government agencies and local governments have not been considered taxable transactions for VAT (value added tax) purposes. However, the new changes specifically mention that the National Fire Fighting Service, Customs Service, Certification of Goods and Services are not subject to the VAT. Similarly, goods and services donated to government agencies and local governments are exempt. Previously such benefits were granted only to non-profit legal entities.

TAXATION OF FOREIGN ASSISTANCE

14. (U) The earlier version of the Tax Code exempted from VAT the sale of goods and provision of services in the framework of foreign assistance. However, the new amendments add to this category humanitarian, financial, and technical assistance and loans provided to Turkmenistan by individuals, not just by foreign states or

international organizations as previously.

¶15. (U) The March 17 Code also describes in more detail who specifically is exempted. (NOTE: The previous version of the Code simply stated that assistance is exempt from the VAT. END NOTE.) Exempted entities include those authorized by foreign states, international organizations or individuals to sell goods or provide services as well as entities determined to be recipients of such assistance and loans, and suppliers or service providers for above-mentioned authorized entities or recipients of such assistance and loans that are paid from assistance funds.

¶16. (U) Humanitarian or charitable assistance provided under intergovernmental agreements or by the decision of the government will be exempt from the excise tax (currently levied on alcohols, fuels and car imports). Donated goods and services provided under humanitarian or charitable assistance, intergovernmental agreements or by the decision of the government will be excluded from the calculation of gross income from the sale of goods and provision of services for the purposes of the corporate income tax.

TAXATION OF PETROLEUM OPERATIONS

¶17. (U) According to the Tax Code, taxpayers involved in petroleum operations have the right to a refund of the VAT paid on goods and services (zero VAT rate). The new amendments provide a list of taxable transactions that are subject to the zero VAT rate. Specifically, these include the sale of goods and provision of services for petroleum operations of entities that are contractors or subcontractors under the Petroleum Law of Turkmenistan, except if such goods and services are used for non-petroleum operations, used for petroleum and non-petroleum operations or the use of such goods and services cannot be determined beforehand. In these cases, contractors or subcontractors under the Petroleum Law should notify

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their vendors before receiving invoices. The amount of VAT paid for goods and services used for petroleum or other operations by entities operating under the Petroleum Law can be credited towards the total VAT payable.

¶18. (U) Corporate income tax is levied on the difference between the gross income and income deductions. The definition of gross income has not been amended and includes income from the sale of goods and services and non-operating gains (interest on any debt instruments, dividends, insurance compensation, positive exchange rate difference in transactions and increases in the value of foreign exchange assets and decreases in the value of foreign exchange liabilities). However, Article 172 in the new version of the code, on corporate income tax rates, has a new clause whose purpose is unclear, but that may offer a pretext or formalization of gross income of petroleum operators that includes non-operating gains. The Corporate Income Tax rate for petroleum companies remains 20%.

TAXATION OF NON-RESIDENTS

¶19. (U) Article 17 of the tax Code defines residents as entities registered (established) in accordance with the legislation of Turkmenistan or headquartered in Turkmenistan. All other entities are considered non-resident. Non-residents can be taxed directly if they operate in Turkmenistan through permanent representations or their tax can be withheld by an appropriate tax agent.

¶110. (U) Permanent representation of a non-resident legal entity is a permanent location of such an entity's business activities, including management site, branch office, bureau, office, agency, factory, workshop, shop or alike. The new Code also added the following as permanent representations: any site of exploration, development, and/or production of natural resources regardless of the term of operation. This includes a mine shaft, mine, oil and/or gas well, quarry, onshore or offshore drilling derricks and/or wells, as well as any site of installation, assembly, set-up, setting into operation, repair and/or maintenance of equipment at the above sites, including all types offshore platforms.

¶111. (U) Permanent representation starts from the date of issuance of

a license for exploration, development and/or production of mineral resources or from the date of commencing such work, signing of a construction site transfer letter or from the date of commencing actual work. Construction sites or assembly locations, and warehouses in Turkmenistan used for sale (supply) of goods are treated as permanent locations.

¶12. (U) The calculation and payment procedure of the corporate tax for non-residents operating through a permanent representation is identical to those of residents. However, there are several distinctions. The gross income and expenses are only related to the activities conducted in Turkmenistan. The newly introduced amendments detail what items cannot be counted as expenses. These include overseas headquarters' management and general administrative expenditure of legal entities (except if provided for a relevant double taxation treaty). The code states that none of the expenses of overseas branches and representative offices of foreign entities can be accounted for as deductions in defining the taxable income related to its activities in Turkmenistan via permanent representation. Exceptions are expenses, directly related to activities in Turkmenistan, that are not accounted for as expenses in calculating income of such branches and representative offices overseas. This should be documented appropriately (for example by an auditor's report) and on the condition that such expenses are accounted for separately. The code provides for deductions of payroll expenses and expenses of temporary duty staff seconded to a temporary representation from the taxable amount, provided they are

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not included in the administrative or management expenses.

¶13. (U) Permanent representations of non-resident legal entities are liable at the source in Turkmenistan to withhold tax on income taxable that they pay to a non-resident without a permanent representation in Turkmenistan, unless they can furnish a written confirmation from the relevant tax division that their provision of services leads to establishment of a permanent representation in Turkmenistan and paid income from activities in Turkmenistan relate to that permanent representation. Tax withheld by a permanent representation is deductible from the representation's total tax amount due.

¶14. (SBU) COMMENT: The newly revised Tax Code, although passed on the same day as the new Law on Foreign Investments, will not have a significant effect on foreign direct investment in the country, since most important amendments concern companies that are not resident in the country. Generally, such companies provide petroleum or construction sectors related services. However, taxation of non-residents, including petroleum service companies, has been subject to wide interpretation by Turkmenistan's tax authorities, and is now made more transparent, although more burdensome. That the new Tax Code considerably eases tax burden on foreign assistance and can facilitate the logistics of processing assistance funds is also a positive change. END COMMENT.

HOAGLAND